

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ALLSTATE INSURANCE COMPANY,

Plaintiff,

No. 2:17-cv-01256

V.

TOWNE OR COUNTRY REAL ESTATE, INC., a Washington corporation; JED W. WHITLEY and DEBORAH K. WHITLEY, husband and wife, and the marital community composed thereof; and TI FOLTZ, individually and on behalf of the marital community,

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Allstate Insurance Company, by and through its attorneys of record, Keller Rohrback L.L.P., for its complaint for declaratory judgment, alleges as follows:

I. PARTIES

1. Plaintiff Allstate Insurance Company (“Allstate”) is an Illinois corporation, domiciled in and with its principal place of business in the state of Illinois.

2. Defendants Jed W. Whitley and Deborah K. Whitley, at all times relevant hereto, were and are, upon information and belief, husband and wife and residents of Snohomish County, Washington.

1 3. Defendant Towne or Country Real Estate, Inc. ("Towne or Country") at all times
2 relevant were and is, upon information and belief, a corporation that does business in Snohomish
3 County, Washington.

4 4. Defendant Ti Foltz, individually and on behalf of the marital community, is upon
5 information and belief, a real estate agent employed by Towne or Country.

6

7 **II. JURISDICTION AND VENUE**

8 5. This is an action over which this Court has original jurisdiction under 28 U.S.C.
9 §1332 because it is a civil action between citizens of different states and the matter in controversy
10 exceeds \$75,000, exclusive of interest and costs.

11 6. Venue is correct in this Court pursuant to 28 U.S. C. §1391(a)(1) because one or
12 more of the defendants reside in this judicial district and 28 U.S.C. §1391(a)(2) because a
13 substantial part of the events or omissions giving rise to this claim occurred in this district and a
14 substantial portion of the transactions leading up to the insurance contract at issue occurred in this
15 district.

16

17 **III. FACTS**

18 7. Allstate issued a Business Owners Policy, No. 648610242, to Towne or Country
19 for the policy period April 30, 2016 to April 30, 2017 (hereinafter the "Policy"). A true and correct,
20 certified copy of the Policy is attached hereto as **Exhibit A**.

21 8. On or about May 17, 2017, a lawsuit was filed by Jed and Deborah Whitley against
22 defendants Towne or Country and Ti Foltz, and others, alleging claims for violations of the
23 Racketeer Influenced and Corrupt Organizations Act ("RICO") §§ 1962(c) and (d), violations of
24 the Federal Aiding and Abetting, Title U.S.C. § 2(a) and (b), Federal Bankruptcy Fraud, title 18
25 U.S.C. §§151, 152, 157A, Federal Mail Fraud, Title 18 U.S.C. § 1341, 1342, and Federal

1 Extortion, Title 18 U.S.C. §1951 (“*Whitley* lawsuit”). A true and correct copy of the Complaint
2 in the *Whitley* lawsuit is attached hereto as **Exhibit B**.

3 9. Defendants Towne or Country and Ti Foltz tendered defense of the *Whitley* lawsuit
4 to Allstate under the Policy. Allstate is providing a defense for defendants Towne or Country and
5 Ti Foltz with respect to the *Whitley* lawsuit under a full reservation of all rights and defenses.
6

7 **IV. CLAIM FOR DECLARATORY RELIEF**

8 10. The Policy consists, in relevant part, of a Business Owners Coverage Form with
9 Liability and Medical Expenses limits of \$2,000,000 per occurrence. It provides in relevant part:

10 **SECTION II – LIABILITY**

11 **A. Coverages**

12 **1. Business Liability**

13 a. We will pay those sums that the insured becomes legally
14 obligated to pay as damages because of “bodily injury,”
15 “property damage” or “personal and advertising injury” to
16 which this insurance applies. We will have the right and
17 duty to defend the insured against any “suit” seeking those
18 damages. However, we will have no duty to defend the
19 insured against any “suit” seeking damages for “bodily
injury,” “property damage,” or “personal and advertising
injury” to which this insurance does not apply. We may, at
our discretion, investigate any “occurrence” or any offense
and settle any claim or “suit” that may result. . . .

20 b. This insurance applies:

21 (1) To “bodily injury” or “property damage” only if:

22 (a) The “bodily injury” or “property damage” is
23 caused by an “occurrence” that takes place in
the “coverage territory;”

24 (b) The “bodily injury” or “property damage”
25 occurs during the policy period; . . .

26 (2) To “personal and advertising injury” caused by an
offense arising out of your business, but only if the offense

1 was committed in the “coverage territory” during the policy
2 period. . . .

3 **B. Exclusions**

4 **1. Applicable To Business Liability Coverage**

5 This insurance does not apply to:

6 **a. Expected or Intended Injury**

7 “Bodily Injury” or “property damage” expected or intended
8 from the standpoint of the insured. This exclusion does not
9 apply to “bodily injury” resulting from the use of reasonable
force to protect persons or property.

10 . . .

11 **p. Personal And Advertising Injury**

12 “Personal and Advertising Injury”

13 (1) Caused by or at the direction of the insured with
14 knowledge that the act would violate the rights of another
15 and would inflict “personal and advertising injury.”

16 . . .

17 **r. Criminal Acts**

18 “Personal and advertising injury” arising out of a criminal
act committed by or at the direction of the insured

19 The policy defines who is an insured and other relevant terms as follows:

20 **C. Who Is An Insured**

21 **1. If you are designated in the Declarations as: . . .**

22 **d. An organization other than a partnership, joint venture or
23 limited liability company, you are an insured. . . .**

24 **2. Each of the following is also an insured:**

25 **a. . . . your “employees,” other than either your “executive
26 officers” (if you are an organization other than a partnership,
joint venture or limited liability company) or your managers
(if you are a limited liability company), but only for acts**

within the scope of their employment by you or while performing duties related to the conduct of your business.

F. Liability and Medical Expenses Definitions

• • •

3. “Bodily injury” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

• • •

13. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. “Personal and advertising injury” means injury, including consequential “bodily injury,” arising out of one or more of the following offenses:

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

d. Oral or written publication, in any manner, of material that libels or slanders a person or organization or disparages a person's or organization's goods, products or services;

e. Oral or written publication, in any manner, of material that violates a person's right of privacy;

f. The use of another's advertising idea in your "advertisement"; or

g. Infringing upon another's
your "advertisement."

“Property Damage” means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

• • •

18. “Suit” means a civil proceeding in which damages because of “bodily injury,” “property damage,” or “personal and advertising injury” to which this insurance applies are alleged. ..

V. CAUSE OF ACTION

11. An actual case or controversy exists between Allstate and defendants Towne or County and Ti Foltz as to whether there is any coverage for the claims asserted against them in the *Whitley* lawsuit under Allstate Business Owners Policy, No. 648610242 issued to Towne or Country. This Court has authority under 28 U.S.C. § 2201 to issue a declaratory judgment in this action.

12. Allstate seeks a declaration that it does not have a duty to provide a defense to defendants Towne or Country or to Ti Foltz and does not have a duty to indemnify them or pay any settlement or judgment that may be entered against them for any of the claims asserted against them in the *Whitley* lawsuit under Allstate Business Owners Policy, No. 648610242 issued to Towne or Country because the *Whitley* lawsuit does not allege a claim caused by an occurrence as that term is defined in the Allstate policy.

13. Allstate seeks a declaration that it does not have a duty to provide a defense to defendants Towne or Country or to Ti Foltz and does not have a duty to indemnify them or pay any settlement or judgment that may be entered against them for any of the claims asserted against them in the *Whitley* lawsuit under Allstate Business Owners Policy, No. 648610242 issued to Towne or Country because the *Whitley* lawsuit does not allege a claim for bodily injury as that term is defined in the Allstate policy.

14. Allstate seeks a declaration that it does not have a duty to provide a defense to defendants Towne or Country or to Ti Foltz and does not have a duty to indemnify them or pay any settlement or judgment that may be entered against them for any of the claims asserted against them in the *Whitley* lawsuit under Allstate Business Owners Policy, No. 648610242 issued to Towne or Country because the *Whitley* lawsuit does not allege a claim for property damage as that term is defined in the Allstate policy.

15. Allstate seeks a declaration that it does not have a duty to provide a defense to defendants Towne or Country or to Ti Foltz and does not have a duty to indemnify them or pay any settlement or judgment that may be entered against them for any of the claims asserted against them in the *Whitley* lawsuit under Allstate Business Owners Policy, No. 648610242 issued to Towne or Country because the *Whitley* lawsuit does not allege a claim for personal injury or advertising injury as those terms are defined in the Allstate policy

16. Allstate reserves the right to rely on the above and on any and all other applicable policy provisions in the Allstate Business Owners Policy, No. 648610242 issued to Towne or Country, including the exclusions outlined above, as the basis for a declaratory judgment that there is no coverage under the Allstate Policy for the claims made in the *Whitley* lawsuit.

VI. PRAYER FOR RELIEF

Having stated a claim for declaratory relief against all the defendants, Allstate Insurance Company requests the Court enter judgment against all defendants as follows:

A. That the Court enter a judgment declaring that there is no coverage under Allstate Business Owners Policy, No. 648610242 issued to Towne or Country for any claims asserted in or arising out of the *Whitley* lawsuit, and that Allstate has no duty to indemnify defendants Towne

or Country or Ti Foltz for any claims asserted in or arising out of the *Whitley* lawsuit, including but not limited to, paying any settlement or judgment that may be entered in the *Whitley* lawsuit;

B. That the Court enter a judgment declaring that because there is no coverage for defendants Towne or Country and Ti Foltz for any of the claims asserted in or arising out of the *Whitley* lawsuit under the Allstate Business Owners Policy, No. 648610242, Allstate has no duty to provide a defense or benefits or coverage of any kind to defendants Towne or Country and Ti Foltz under that Policy in connection with any claims asserted in or arising out of the *Whitley* lawsuit, including any claims made, judgment entered, or settlement reached in that lawsuit;

C. That Allstate be awarded its costs and attorney fees incurred herein as allowed by law; and

D. For such other and further relief as the Court deems just and equitable under the circumstances.

DATED this 18th day of August, 2017.

KELLER ROHRBACK L.L.P.

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